IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 241 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant

Versus

PANKAJ DYESTUFF INDUSTRIES - Respondent(s)

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Appearance :

MR MANISH R BHATT for the Applicant

NOTICE SERVED for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 06/07/2005

ORAL JUDGMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “A”, has referred the following question for the opinion of this Court under section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of Commissioner of Income Tax :

> “Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.87,250/- deposits in the accounts of partners?”

1.1 The question as referred is not properly worded and the correct question should read as under :

> “Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.87,250/- being deposits in the accounts of partners?”

2. The assessment year is 1984-85 and the relevant accounting period is the year which ended on 31st March 1984. The assessee is carrying on the business of manufacture and sale of colours and chemicals.

3. The assessee filed return of income declaring a loss of Rs.1,07,118/-. On scrutiny of the balance sheet and partners' accounts, the Income Tax Officer found unexplained new deposits and credits in cash in the accounts of seven different partners, as stated in the assessment order, totalling to Rs.87,250/- as well as cash credit in the accounts of outsiders, totalling to Rs.39,000/-. Accordingly, the Income Tax Officer made an addition to the tune of Rs.1,26,250/- in respect of the aforesaid unexplained cash credits to the income of the assessee.

4. The main grounds on which the additions were made are that, in most of the confirmatory letters filed by the parties, it was stated that the amounts were deposited out of agricultural income. However, the amounts so deposited and credited were substantially heavy and there was no supporting material to show that the parties were in a position to deposit such huge amounts with the assessee firm; or that they were deriving substantially huge agricultural income so as to enable them to deposit the amounts in question. The version in the

confirmatory letters had also not been substantiated by production of the parties.

5. The assessee carried the matter in appeal before the Deputy Commissioner of Income Tax (Appeals), who for the reasons stated in his order dated 21st September 1980, deleted the addition of Rs.87,250/-. As regards the remaining addition of Rs.39,000/- in respect of credits in the accounts of third parties, the Deputy CIT (Appeals) deleted addition of Rs.3,000/- in respect of one depositor and in respect of balance cash credits of Rs.36,000/-, he set aside the assessment order with a direction to re-examine the cash creditors after giving an adequate opportunity of hearing.

6. Against the deletion of addition of Rs.87,250/-, the revenue preferred appeal before the Income Tax Appellate Tribunal, and the Tribunal for the reasons stated in its order dated 11th March 1992, confirmed the findings of the Deputy CIT (Appeals) and dismissed the appeal.

7. Mrs.M.M.Bhatt, the learned standing counsel appearing for the revenue reiterated the grounds stated by the Income Tax Officer for making the additions and submitted that no supporting materials had been produced by the assessee to show that the partners were in a position to deposit such huge amounts with the assessee firm. It was submitted that, accordingly, the Assessing Officer was justified in coming to the conclusion that the amounts of cash credits were not satisfactorily explained and had rightly added the same to the assessee's income, by drawing presumption under Section 68 of the Act. Reliance was placed upon the decision in case of Commissioner of Income Tax v. Mansurali Valibhai Dudhani, [1984] 148 ITR 526 in support of her contentions.

8. Despite service, there is no appearance on behalf of respondent.

9. As can be seen from the order of the Tribunal, the Tribunal has confirmed the findings of the Deputy Commissioner of Appeals, hence it would be necessary to advert to the findings recorded by the Deputy CIT (Appeals). Before the Deputy CIT (Appeals), it had been contended on behalf of the assessee that the source of monies in the hands of the partners had been explained by producing necessary supporting evidences by way of extract from panipatrak in Form 7/12 and record of rights in Form 8-A etc. That the Income Tax Officer had not disputed that the credits in the accounts of the partners were not deposits from the partners. It was pointed out that the credits in the accounts of partners are not in proportion to the profit sharing ratio. It was submitted that the partners had satisfactorily explained the credits in their accounts by necessary supporting evidence. Alternatively, it was contended that, in any view of the matter, the credits in the accounts of the partners are to be explained by the partners and not by the firm. Reliance was also placed upon the decision of the Allahabad High Court in case of Commissioner of Income Tax v. Jaiswal Motor Finance (1983) 141 ITR 706, wherein it has been held as follows:

> "It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm."

10. The Deputy CIT (Appeals), upon consideration of the submissions of the appellant, found that the partners had produced sufficient evidence to show the source for deposit in their accounts. Accordingly, he deleted the addition. However, he left it open for the Income Tax Officer to consider the cash credits in the hands of the partners, if he was not satisfied with the source of investment of cash credits in the

hands of the partners.

11. This Court in a recent decision dated 29th June 2005 rendered in case of C.I.T. v. Pragati Cooperative Bank Ltd., Income Tax Reference No.215 of 1993 has, while construing the provisions of section 68 of the Act, observed as follows :

> "11. Section 68 of the Act requires that there has to be a credit in the books maintained by an assessee; such credit has to be of a sum during previous year; and the assessee offers no explanation about the nature and source of such credit; or the explanation offered by the assessee is not, in the opinion of the assessing authority, satisfactory, then the sum so credited may be charged to tax as income of the assessee of that previous year. The Apex Court in the case of Commissioner of Income Tax Vs. Smt.P.K.Noorjahan, (1999) 237 ITR 571 has laid down that the word "may" indicated the intention of the legislature that a discretion was conferred on the Assessing Officer in the matter of treating the source of investment / credit which had not been satisfactorily explained as income of an assessee, but it was not obligatory to treat such source as income in every case where the explanation offered was found to be not satisfactory.
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> 12. Applying the aforesaid principle to the facts found, it is not possible to state that the Tribunal committed any error when it confirmed the findings of CIT (Appeals) deleting the addition. The assessee offered an explanation. The said explanation is not found to be false. The Assessing Officer merely does not accept the explanation because he finds it not satisfactory. From that,

legally there is no obligation, on the Assessing Officer, to treat the fixed deposits as income of the assessee."

12. The Bombay High Court in case of Narayandas Kedarnath v. Commissioner of Income Tax, Central, [1952] 22 ITR 18 has, while dealing with the question as to whether certain amounts standing to the credit of some of the partners of the assessee firm could be treated as undisclosed profits of the firm itself, observed thus :

"If the department was satisfied that moneys, although paid in in the names of the partners or strangers, were really undisclosed profits of the firm and were not individual contributions made by partners or strangers, then it would be legitimate for the department to draw an inference that those moneys represented the undisclosed profits of the firm. But here the only finding we have from the Tribunal is that these moneys were brought in by the partners from their native place and that no adequate explanation is forthcoming from the persons themselves as to where these moneys came from. Now it seems to me that the assessee firm has discharged the burden which was upon it to explain these credit entries and it has discharged the burden by satisfying the department that these entries represent genuine remittances received from Jaipur which have gone into the coffers of the firm. When that burden is discharged, it would be for the department to find that notwithstanding the fact that these moneys were actually brought in they do not represent the moneys of the partners but they represent the undisclosed profits of the firm which left the firm earlier and returned through the intermediary of the partners. If the department was not

satisfied with the explanation given by the partners then it is legitimate for the department to draw an inference that these amounts represent undisclosed profits of the partners and to assess them in their own individual assessment."

The aforesaid decision in the case of Narayandas Kedarnath (supra) rendered by Bombay High Court on 28th March 1952 has precedential value equivalent to a decision of this Court and hence, is equally binding on this Court. The said decision though rendered under the Indian Income Tax Act, 1922, would not make any difference. Section 68 of the Act was introduced for the first time in the Act and there was no corresponding provision in the 1922 Act. However, as per settled legal position, Section 68 of the Act only gives a statutory recognition to the principle that cash credits which are not satisfactorily explained might be assessed as income. (See CIT v. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78).

13. Applying the aforesaid principles to the facts of the present case, it is apparent that the assessee had furnished the details which would discharge the onus which lay on the assessee. It is not the case of the revenue that the partners of the assessee firm are fictitious. The Income Tax Officer has not disputed that the credits in the accounts of the partners were not deposits from the partners. Moreover, it is an admitted position that this was the second year of the firm, and that it was running in loss. It is true that the Income Tax Officer did not accept the explanation given on behalf of the assessee in respect of the new deposits or cash credits in the accounts of the partners. The mere non-acceptance of that explanation does not, however, provide material for finding that the said sum represented income of the

assessee firm. As held by the Allahabad High Court in case of Commissioner of Income Tax, Allahabad v. Jaiswal Motor Finance (supra), in the absence of any material to indicate that there were profits of the firm, the amount credited to the partners' accounts could not be assessed in the hands of the firm. Once the partners have owned that the monies deposited in their accounts are their own, the Income Tax Officer is entitled to and may proceed against the partners and assess the same in their hands, if their explanation is not found satisfactory.

14. In the facts and circumstances of the present case, both the Deputy CIT (Appeals) and the Tribunal have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The interest of the revenue is also safeguarded as the Income Tax Officer has been given the liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners.

15. In these circumstances, it is not possible to find that the order of the Tribunal suffers from any infirmity which would require interference at the hands of this Court. Accordingly, it is held that the Tribunal was right in law and on facts in deleting the addition of Rs.87,250/- being deposits in the accounts of the partners. The question referred to this Court is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the revenue.

16. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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